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Feb. 17, 1982

## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-206141

DATE: February 17, 1982

MATTER OF: Johnson Controls, Inc.

## DIGEST:

1. Protest against contracting agency's affirmative determination of responsibility is dismissed, since GAO no longer reviews such determinations except for reasons not present here.
2. Protest that competitor was able to offer lower price than protester because competitor employed protester's former employee who assisted in preparation of protester's prices is an allegation of an improper business practice which is not for consideration under our Bid Protest Procedures.
3. Alleged impropriety in solicitation not raised until after bid opening is untimely and will not be considered on merits.

Johnson Controls, Inc. (JCI), protests an award to Potomac Contractors/Fireside Home Remodeling Company (P/F) under solicitation No. CS-1100-2-0436 issued by the National Park Service (NPS), Department of the Interior, Harpers Ferry, West Virginia.

JCI argues that P/F is nonresponsible and, therefore, should not be awarded a contract under the solicitation despite its low price.

Our Office no longer reviews a contracting agency's affirmative determination of responsibility unless either fraud is shown on the part of the procuring agency or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Nedlog Company, B-204557, September 21, 1981, 81-2 CPD 235. JCI does not argue that either of these

exceptions is present here. Rather, JCI argues that its own investigation of P/F indicates that P/F lacks the experience, the technical expertise and the skilled workers necessary to perform the proposed contract. Under the circumstances, we have no basis for reviewing NPS's responsibility determination.

JCI also mentions that a former employee with knowledge of JCI's prior year's prices and who assisted in the preparation of the current year's prices is now employed by P/F. JCI implies that, because of this employee's knowledge, P/F was able to offer a lower price than JCI. Basically, an improper business practice is being alleged. Computer Science Corporation, B-194286.3, July 3, 1979, 79-2 CPD 5. An allegation of improper business practice will not be considered under our Bid Protest Procedures. Resource Development Institute, Inc., B-196204, October 10, 1979, 79-2 CPD 245.

Finally, JCI indicates that the solicitation was defective for failing to specify definite standards of performance for potential contractors. Under our Bid Protest Procedures, any protest based on an alleged impropriety in the solicitation which is apparent prior to bid opening must be filed (received) in our Office prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1981). Since JCI did not raise this matter until after bid opening, it is untimely and, therefore, will not be considered on the merits.

We dismiss the protest.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel